

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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G. TRAVERSI,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the Northern Division of the  
United States District Court of the  
Northern District of California,  
First Division.

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FILED

JAN 12 1923

F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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G. TRAVERSI,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

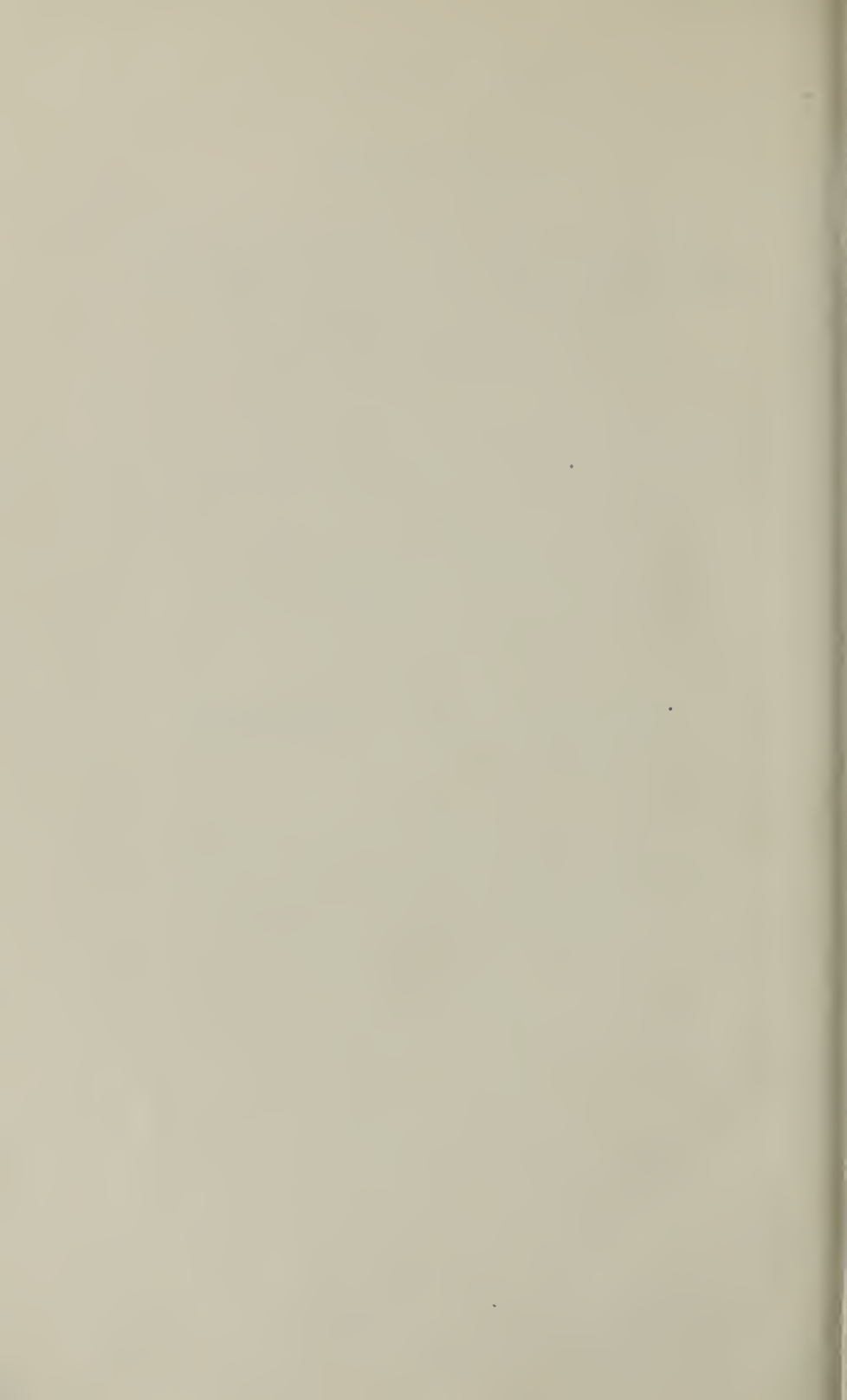
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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys of Record.**

**APPEARANCES:**

JOHN T. WILLIAMS, U. S. Attorney, San Francisco, for the United States.

HARRY GRAY and R. PLATNAUER, Sacramento, for Plaintiff in Error.

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In the Northern Division of the United States District Court, for the Northern District of California, First Division.

(No. 1271.)

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

G. TRAVERSI and PETE TARO,  
Defendants.

**(Praecipe for Transcript of Record.)**

To the Clerk of the Above-named Court.

You are requested to prepare a transcript of record to be filed and to file the same in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to a writ of the error allowed the defendant P. Traversi in the above-entitled cause, and to include in such transcript of record the following:

The judgment-roll in said cause, and the verdict of the jury.

The minutes of the Court of all proceedings had before the Court in said cause.

The petition for a writ of error and the assignment of errors filed therewith.

The bill of exceptions of the defendant G. Traversi after the same shall have been settled and allowed.

Dated, October 17th, 1922.

HARRY J. GRAY and  
R. PLATNAUER,

Attorneys for Defendant, G. Traversi.

[Endorsed]: Filed Oct. 17, 1922. Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk.  
[1\*]

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In the Northern Division of the United States  
District Court, for the Northern District of  
California, First Division.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

G. TRAVERSI and PETE TARO,  
Defendants.

### Information.

At the April term of said court in the year of our Lord one thousand nine hundred and twenty-two—

BE IT REMEMBERED, that Ben F. Geis, Assistant United States Attorney, who for the United States in its behalf prosecutes in his own proper person, comes into court on this, the 10th day of

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\*Page-number appearing at foot of page of original certified Transcript of Record.



April, 1922, and with leave of the said Court first having been had and obtained, gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents:  
THAT

G. TRAVERSI and PETE TARO,  
hereinafter called the defendants heretofore, to wit, on or about the 5th day of April, 1922, at 115 I St., Sacramento, in the County of Sacramento, in the Northern Division of the Northern District of California, and within the jurisdiction of this court then and there being, did then and [2] there wilfully and unlawfully maintain a common nuisance in that the said defendants did then and there wilfully and unlawfully keep for sale on the premises 115 I St. aforesaid, certain intoxicating liquor, to wit: 1 Qt. bottle  $\frac{1}{3}$  full *full* of red wine then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the keeping for sale of the said intoxicating liquor by the said defendants at the time and place aforesaid, was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act,

Against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

## SECOND COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof,

NOW, THEREFORE, your informant presents:  
THAT

G. TRAVERSI and PETE TARO,  
hereinafter called the defendants, heretofore, to wit, on or about the 5th day of April, 1922, at 115 I St., Sacramento, in the County of Sacramento, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully possess certain intoxicating liquor, to wit: 1 Qt. bottle  $\frac{1}{3}$ , full red wine then and there containing one-half of one per cent [3] or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said defendants at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Con-

gress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

BEN F. GEIS,  
Assistant United States Attorney. [4]

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

D. D. Simpson, being first duly sworn, deposes and says: That G. Traversi and Pete Taro, on or about the 5th day of April, 1922, at 115 I St., Sacramento, County of Sacramento, in the Northern Division of the Northern District of California, and within the jurisdiction of this court, did then and there maintain a common nuisance in that the said defendants did then and there keep for sale on the said premises at 115 I St. aforesaid certain intoxicating liquor, to wit: 1 Qt. bottle  $\frac{1}{3}$  full of red wine then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the keeping for sale of the said intoxicating liquor by the said defendants at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

And affiant on his oath aforesaid further deposes and says: That G. Traversi and Pete Taro, on or

about the 5th day of April, 1922, at 115 I St., Sacramento, County of Sacramento, in the Northern Division of the Northern District of California, and within the jurisdiction of this court, did then and there possess certain intoxicating liquor, to wit: 1 Qt. bottle  $\frac{1}{3}$  full of red wine then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the keeping for sale of the said intoxicating liquor by the said defendant was then and there prohibited, unlawful [5] and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

D. D. SIMPSON.

Subscribed and sworn to before me this 7th day of April, 1922.

[Seal]

THOMAS J. FRANKLIN,  
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Apr. 10, 1922. W. B. Maling, Clerk. By Thomas J. Franklin, Dep. Clerk.

(Back.)

Oct. 2, '22. Defts. arr., pl. not guilty.

Oct. 11, 1922—Trial. Verdict of Jury.

G. Traversi—Guilty.

Pete Taro—Not Guilty.

Contd. to Oct. 13, 1922, for Judg't.

Oct. 13, 1922. Or. deft. Traversi pay fine \$500 and be impr. 3 mos., Sacto. Co. Jail, and in default pagt. fine be impr. further period of 5 mos.—terms to run consecutively. [6]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City of Sacramento, on Tuesday, the 2d day of October, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 1271.

UNITED STATES OF AMERICA

vs.

G. TRAVERSI and PETE TARO,

**Minutes of Court—October 2, 1922—Arraignment.**

The defendants being present with Harry Gray, their attorney, and K. M. Green, Assistant United States Attorney, appearing for the United States, the said defendants were duly arraigned upon the information filed herein, stated their true names to be as contained therein, and to the said Information plead not guilty, which pleas the Court ORDERED be and the same are hereby entered.

On motion of Mr. Green FURTHER ORDERED that this cause be and the same is hereby set for trial October 11, 1922. [7]



At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City of Sacramento, on Wednesday, the 11th day of October, in the year of our Lord one thousand nine hundred and twenty-two, Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 1271.

UNITED STATES OF AMERICA

vs.

G. TRAVERSI and PETE TARO,

**Minutes of Court—October 11, 1922—Trial.**

This cause came on this day for trial, K. M. Green, Assistant United States Attorney, appearing on behalf of the Government, and the defendants being present with their attorney, Harry Gray. Thereupon, the following named persons, to wit:

Mat Rainey,	Earl D. Jelley,
Wm. L. Haley,	H. C. Muddox,
Chester E. Gruhler,	Walter D. Young,
Leroy L. Cramer,	Harry E. Magee,
B. C. French,	F. B. Fancher, and
C. F. Prentiss,	Chas. C. Geiger,

twelve good and lawful jurors were, after being examined under oath by counsel for both sides, duly accepted and sworn to try the issue joined herein. Mr. Green made the opening statement for the Government. V. H. deSpain, W. W. Greer and A. D.

Etienne were sworn and testified on behalf of the Government, and the Government rested. Pete Taro and G. Traversi, the defendants, were sworn and testified on their own behalf, and the defendants rested. The evidence being closed, counsel waived argument and the Court having instructed the jury [8] they retired at 3:30 o'clock P. M. to deliberate upon their verdict. At 3:55 o'clock P. M. the jury returned into court and having been asked if they had agreed upon their verdict, they answered in the affirmative and returned the following verdict, which was ORDERED recorded, to wit:

“We, the Jury, find G. Traversi and Pete Taro, the defendants at the bar

G. Traversi Guilty,

Pete Taro Not Guilty.

C. F. PRENTISS,

Foreman.”

The jurors having been asked if said verdict as recorded was their verdict, they answered that it was. ORDERED, that the defendant Pete Taro be discharged and that his bond be exonerated. FURTHER ORDERED that this cause be and the same is hereby continued until October 13, 1922, for judgment as to the defendant G. Traversi. FURTHER ORDERED that the jury be excused from further consideration of this case. [9]

In the Northern Division of the United States District Court for the Northern District of California.

No. 1271.

THE UNITED STATES OF AMERICA

vs.

G. TRAVERSI and PETE TARO.

**Verdict.**

We, the Jury, find G. Traversi and Pete Taro, the defendants at the bar,

G. Traversi Guilty.

Pete Taro Not Guilty.

C. F. PRENTISS,

Foreman.

[Endorsed]: Filed October 11, 1922, at 3 o'clock and 55 minutes P. M. Walter B. Maling, Clerk.  
By J. A. Schaertzer, Deputy Clerk. [10]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City of Sacramento, on Friday, the 13th day of October, in the year of our Lord, one thousand nine hundred and twenty-two. Present: the Honorable WILLIAM C. VAN FLEET, District Judge,

No. 1271.

UNITED STATES OF AMERICA

vs.

G. TRAVERSI.



**Minutes of Court—October 13, 1922—Entry of Judgment.**

This cause came on regularly this day for entry of judgment as to the defendant G. Traversi. The defendant being present with Harry Gray, his attorney, and K. M. Green, Assistant United States Attorney, appearing on behalf of the United States, the defendant was called for judgment. The defendant was asked if he had any legal cause to show why judgment should not be pronounced herein. V. H. deSpain and John D. McKinney were sworn and testified on behalf of the Government and C. Meredith, G. H. Jurgens and Joe Oliva were sworn and testified on behalf of the defendant. Thereupon no sufficient cause being shown or appearing to the Court why judgment should not be entered herein, the Court ORDERED that the said defendant G. Traversi, for the offense for which he stands convicted, pay a fine in the sum of Five Hundred (\$500.00) Dollars and be imprisoned for the period of three (3) months and in default of the payment of the said fine, that he be imprisoned for a further period of five (5) months, said periods of imprisonment to run consecutively. FURTHER ORDERED that imprisonment be by confinement in the County Jail, Sacramento County, California. FURTHER ORDERED that the defendant be and he is hereby granted a stay of execution of judgment until October 17, 1922. [11]

In the Northern Division of the United States District Court for the Northern District of California.

No. 1271.

Convicted Viol. Act. Oct. 28, 1919.

UNITED STATES OF AMERICA

vs.

G. TRAVERSI.

**Judgment on Verdict of Guilty.**

K. M. Green, Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the Information filed on the 10th day of April, 1922, charging him with the crime of violation of the Act of Oct. 28, 1919; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 11th day of October, 1922, to wit:

“We, the Jury, find G. Traversi and Pete Taro, the defendants at the bar

G. Traversi	Guilty,
Pete Taro	Not Guilty.

C. F. PRENTISS,  
Foreman.”

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein, and no sufficient cause being shown or appearing to the Court, thereupon the Court rendered its judgment:

THAT WHEREAS the said G. Traversi having been duly convicted in this Court of the crime of violation of the Act of Oct. 28, 1919:

IT IS THEREFORE ORDERED AND ADJUDGED that the said G. Traversi pay a fine in the sum of Five Hundred (\$500.00) Dollars and that he be imprisoned for the period of three (3) months, and in default of the payment of said fine that he [12] be imprisoned for a further period of five (5) months, said periods of imprisonment to run consecutively.

FURTHER ORDERED that imprisonment be by confinement in the County Jail, Sacramento County, California.

Entered this 13th day of October, 1922.

WALTER B. MALING,  
Clerk.

By Thomas J. Franklin,  
Deputy Clerk. [13]

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In the Northern Division of the United States  
District Court, for the Northern District of  
California, First Division.

No. 1271.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

G. TRAVERSI and PETE TARO,  
Defendants.

**Petition for Writ of Error.**

To the Honorable the Northern Division of the District Court of the United States for the Northern District of California.

The defendant G. Traversi presents this his petition for a writ of error to the Northern Division of the District Court of the United States for the Northern District of California; and in support of said petition he respectfully shows:

That on or about the 13th day of October, 1922, there was rendered and entered in the above-entitled cause in the said District Court of the United States, a judgment that said defendant G. Traversi pay a fine of five hundred dollars (\$500.00) and that he be imprisoned in the County Jail of Sacramento County, State of California, for the term of three (3) months and in default of payment of said sum of five hundred dollars (\$500.00) he be further imprisoned for five (5) months; that in the records thereof, had in said cause and in said judgment, and in the proceedings had prior thereunto in said cause, certain errors were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

WHEREFORE said defendant prays that a writ of error may [14] issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in said cause, duly authenti-

cated, may be sent to the said Circuit Court of Appeals.

Dated, October 17th, 1922.

HARRY J. GRAY,  
R. PLATNAUER,

Attorneys for Defendant, G. Traversi.

Receipt of a copy of the within is hereby admitted  
this —— day of October, 1922.

KENNETH M. GREEN,  
Asst. U. S. Atty.

[Endorsed]: Filed Oct. 17, 1922. Walter B.  
Maling, Clerk. By Thomas J. Franklin, Deputy  
Clerk. [15]

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In the Northern Division of the United States  
District Court, for the Northern District of  
California, First Division.

No. 1271.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

G. TRAVERSI and PETE TARO,  
Defendants.

### **Assignment of Errors.**

And now comes the defendant G. Traversi, by his  
attorneys, and says that in the aforesaid proceed-  
ings and in the judgment made, rendered and en-  
tered therein, there is manifest error, in this, to wit:

1. The information, under which said defendant

was tried fails to state facts sufficient to constitute a public offense.

2. Said information fails to state facts sufficient to show that said defendant had violated the law, or that he was guilty of any offense.

3. Said information is insufficient to sustain a conviction.

4. The first count of said information fails to state facts sufficient to constitute a public offense.

5. The first count of said information fails to state facts sufficient to show that said defendant had violated the law, or that he was guilty of any offense.

6. The first count of said information is insufficient to sustain a conviction.

7. The second <sup>count</sup> ~~part~~ of said information fails to state facts sufficient to constitute a public offense.

8. The second count of said information fails to state facts sufficient to show that said defendant had violated the law, or that he was guilty of any offense. [16]

9. The second count of said information is insufficient to sustain a conviction.

10. The District Court erred in giving to the jury that portion of the charge of the Court given to the jury which is as follows:

“The first count of this information charged the defendants with maintaining a common nuisance, and a nuisance under this act is defined thus, ‘Any room, house, building, boat, vehicle, structure or place where intoxicating liquor is manufactured, sold, kept or bartered in violation of this title, and all intoxicating



liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance,' that is, it simply means that where liquor is kept in a building or a structure where it is not permitted to be kept under the prohibition act the maintaining of it is deemed for illicit and illegal purposes and it constitutes what is denominated there a common nuisance. Now under the National Prohibition Act one may keep liquor in their private dwelling on premises that is devoted solely to the use by them of a private dwelling, liquor for their own use and consumption and that of their family but not otherwise. Any liquor that is maintained in a place which is not exclusively that residence, although the parties may live upon the premises, if it is devoted partly to use as a saloon or soft drink place, or a hotel or any, other than exclusively as a private dwelling, the maintenance of liquor there is not permitted under the law. Now that is the charge in the first count here."

(a) For that said first count charged said defendant with maintaining a common nuisance in that said defendant wilfully and unlawfully did "keep for sale" on certain premises certain "intoxicating" liquor:

(b) For that the Court in giving said instruction that the "keeping" of any liquor in a building or structure where it is not permitted to be kept under the prohibition act, constitutes a common nuisance. [17]

(c) For that the Court in giving said instructions assumed to pass upon the question of fact that the liquor with which said defendant was charged with keeping for sale was intoxicating liquor, as the same is defined in the National Prohibition Act.

(d) For that the Court in giving said instructions assumed to pass upon the question of fact that said intoxicating liquor was kept for sale by said defendant upon said premises.

(e) For that said first count of the information charged that said defendant wilfully and unlawfully kept said intoxicating liquor for sale on said premises; and said instruction omits the element of wilfully keeping intoxicating liquor for sale.

11. The District Court erred in giving to the jury that portion of the charge of the Court given to the jury, which is as follows:

“It is true as the United States Attorney suggests that it is not necessary under this act that it be shown that any positive sale or dispensing of liquor was going on at the time provided it is shown that there was liquor maintained on the premises. Section 33 of the act provides: ‘After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be *prima facie* evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title.’ In other words where liquor is



found upon the premises that are not of the character of those described in the act as being such that people are entitled to keep liquor there, then that very fact raises the presumption and is *prima facie* evidence that it was there for an illegal purpose under the law. As I say the only place where liquor is permitted to be maintained under the Prohibition Act is one's private residence, premises devoted solely to the occupation and use as such. It is true that where one lives at a hotel or lives in a flat, or lives in apartments, exclusively devoted to the purposes of residence he may keep and maintain [18] liquors in those premises so occupied by him, but he is not at liberty to carry it out of those premises or take it out for the purpose of going elsewhere and enjoy it with his meals. For the purpose of the law is to suppress the public consumption and maintenance of liquors that are prohibited under this act so that the law shall not be subject to any pretense that it is being used under such circumstances solely for the use of the parties. If the defendant Traversi is testifying truthfully that he was taking this with him to some place where he was going to have his lunch he would be violating the law because if he maintained it in his private residence or maintained it in a room occupied by him as a private residence he would be entitled to have it there and serve his family there, but not permitted to take it off the premises."

(a) For that the same is not called for or justified by the evidence.

(b) For that the Court in giving said instruction that the *prima facie* presumption that liquor is being kept for the purpose of being sold, as prescribed by section 33 title II of the National Prohibition Act, cannot be rebutted by evidence which, although true, tends to show the commission of some other offense under the act, but which conclusively shows that such liquor was not being kept for sale, or for the purpose of being sold, and which, taken to be true, proves conclusively that the offense charged in the first count of said information was not committed by the defendant.

(c) For that the Court, in giving said charge, instructed the jury that the possession of liquor in a place where the same is not permitted to be kept, is conclusive evidence that such liquor was kept there for the purpose of being sold, and was kept for sale.

12. The District Court erred in giving to the jury that portion of the charge of the Court given to the jury, which is as follows: [19]

“The second count is that on the same date the defendants had in their possession the liquor that is charged here as having been taken from the defendant Traversi. This quart of red wine. Now possession, of course, you all understand what that means. It means either having it in your hands, your pockets, or on premises immediately under your control. That is, in law, in your possession, and the defendants are charged with having this liquor

in their possession and under circumstances which is not warranted under the Act."

(a) For that the same is not called for or justified by the evidence.

(b) For that the mere possession of intoxicating liquor, even if such possession be in a place prohibited by the National Prohibition Act, is no offense, and that the law provides no penalty thereof.

(c) For that Congress has no power to constitute the mere possession of intoxicating liquor, in any place whatever, a crime.

(d) For that the second count of said information charged that said defendant did wilfully and unlawfully possess certain intoxicating liquor on said premises, and said instruction omits the element of wilfully possessing said intoxicating liquor.

13. The District Court erred in entering said judgment and imposing sentence upon the verdict of guilty in the manner and form as done.

14. The District Court erred in pronouncing judgment upon said verdict.

HARRY J. GRAY and  
R. PLATNAUER,

Attorneys for Defendant and Plaintiff in Error  
G. Traversi.

Receipt of a copy of the within is hereby admitted  
this — day of October, 1922.

KENNETH M. GREEN,  
Asst. U. S. Atty.

[Endorsed]: Filed Oct. 17, 1922. Walter B.  
Maling, Clerk. By Thomas J. Franklin, Deputy  
Clerk. [20]

In the Northern Division of the United States District Court, for the Northern District of California, First Division.

No. 1271.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

G. TRAVERSI and PETE TARO,

Defendants.

**Order Allowing Writ of Error.**

On this 17th day of October, 1922, came the defendant, G. Traversi, by his attorney, and filed herein and presented to the Court his petition, praying for the allowance of a writ of error, an assignment of errors intended to be urged by him, praying also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. On consideration whereof, it is ordered that said writ of error be and the same is hereby allowed.

Dated this 17th day of October, 1922.

WM. C. VAN FLEET,  
District Judge.

[Endorsed]: Filed Oct. 17, 1922. Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk. [21]

In the Northern Division of the United States District Court, for the Northern District of California, First Division.

No. 1271.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

G. TRAVERSI and PETE TARO,

Defendants.

**Order Dated October 17, 1922, Extending Time  
Ten Days to File Bill of Exceptions.**

For reasons appearing to the Court, it is ordered that the time allowed the defendants to file his bill of exceptions in this case be and the same is hereby extended for the period of ten days in addition to the time allowed by law.

Dated, October 17th, 1922.

WM. C. VAN FLEET,

District Judge.

[Endorsed]: Filed Oct. 17, 1922. Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk. [22]

In the Northern Division of the United States District Court for the Northern District of California.

No. 1271.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

G. TRAVERSI and PETE TARO,

Defendants.

**(Bill of Exceptions.)**

BE IT REMEMBERED, that on the trial of this cause in this Court at the October term on the 11th day of October, A. D. 1922, of said Court, the Hon. Wm. C. Van Fleet, Judge presiding, when the following proceedings were had, to wit: A jury was impaneled and sworn according to law, and thereupon the plaintiff, to sustain the issue upon its part offered the testimony of the following witnesses as his evidence in chief:

**Testimony of V. H. De Spain, for the Government.**

V. H. DE SPAIN, a witness sworn on behalf of the plaintiff, testified as follows: I am a Federal prohibition agent, and was such on the 5th day of April, 1922. I am familiar with the premises, 115 "I" Street, in this city. I visited those premises on the date last mentioned. I saw the defendant Taro first; he was back of the bar. He was in his shirt-sleeves. At the time I entered the place he was serving two patrons with beer. I told him I



(Testimony of V. H. De Spain.)

was a Federal Prohibition Agent, and told him to step out from behind the bar, and, as he did, he started fighting with us. We entered the bar, and Agent Wrinkle held him there. Agents Plant and Greer were with me among other agents. About that time I saw the other defendant Traversi; at the end of the bar there was a door that leads into a hallway and then upstairs, and he came through that doorway with a bottle of wine in his hands, and I took it from him. I labeled it and turned it over to Mr. Greer to hold as evidence. There were four or five people in the premises at the time I and the other agents were in there. They were all up to the bar. They were drunk. They displayed that by staggering. [23]

Cross-examination by Mr. GRAY, Attorney for the Defendants.

Taro was back of the bar when I went into the place. Q. "Did you see Mr. Taro handle any liquor of any kind or nature?" A. "Beer, that is what he was doing when I went in." I did not take any of that beer as a sample; I think that was near beer. I never saw him have in his possession anything but this near beer. He was acting as bartender back of the bar serving drinks. I did not see Taro serving liquor of any kind other than the beer.

To the COURT.—I did not have the beer tested as to its character. I saw Taro serve nothing but beer. The four or five people that were in the

(Testimony of W. W. Greer.)

saloon at the time I went in there were drunk. I do not know where they procured their liquor to get drunk on.

**Testimony of W. W. Greer, for the Government.**

W. W. GREER, a witness sworn on behalf of the plaintiff, testified as follows:

I am a Federal prohibition officer, and was such on April 5th, 1922. I am familiar with the premises 115 "I" Street in this city. It is an old-fashioned saloon premises. I visited it on the day last mentioned. Q. "Do you know the defendants in this case?" A. "Yes, I have seen them." I saw them there on that date. I first saw the one that had his coat off—referring to the defendant Taro—he appeared to me to be bartender in the act of waiting on the bar. He had his coat off. He was standing behind at the end of the bar when I came in.

Q. "Did you hear a conversation with and see anything happen between him and agent De Spain?" A. "It was between him and Agent Wrinkle." Q. "What happened between them?" A. "Oh, they had a scuffle."

Q. "Did you hear anyone announce that you were all Federal Agents?" A. "We always do that when we first go in."

I did not hear it done in this case, because I was about the third one that went in. I saw the defendant Traversi after I had seen the other defendant. I saw him coming out through this door at the end



(Testimony of W. W. Greer.)

of the bar; into behind the bar. He had a bottle and De Spain took it away from him. Q. "Do you know [24] what was in the bottle?" A. "He had a bottle of red wine." Q. "How do you know it was red wine?" A. "We always examine those bottles for evidence." Q. "Did you on this occasion?" A. "Yes, we smelt it and tasted it and sampled it and it was red wine." I have been a Federal Prohibition Agent about a little more than a year. I have on numerous occasions sampled wine and other intoxicating liquors; we have to do that every day. Q. "And, based upon your experience, do you testify that that was wine?" A. "Yes." Q. "Containing more than one-half of one per cent of alcohol by volume?" A. "Yes." After I got the bottle of wine from agent De Spain, we corked it up and put a label on it, sealed it with red wax, and delivered it to the United States Marshal.

Cross-examination by Mr. GRAY, Attorney for the Defendants.

I did not take the bottle of wine from Mr. Traversi. Mr. De Spain handed it over the counter to me. I am well acquainted with the premises from my observation at that time. Q. "Did you visit the room where that door leads to?" A. No sir, I didn't go beyond that door. (To the Court.) The door is behind the bar, at the end of the bar next to the street. I did not go through that door. Q. "You don't know anything about what was beyond that door?" A. "I had no busi-

(Testimony of W. W. Greer.)

ness in there." I did not see Mr. Taro handling any liquor that I would call intoxicating liquor or anything else. Q. "Was there anyone else present, Mr. Greer, besides the prohibition agents and Mr. Taro, and Mr. Traversi and the two or three men that you heard Mr. De Spain say were in the room?" A. "The wife of the defendant was present." Q. "You say Mrs. Traversi was there?" A. "I suppose she was there the way she acted." She did not say a word during the time I was there. I did not see Mr. Traversi serving a meal at that time. (To the Court.) There were five or six men in the saloon.

I saw no liquor served to any of them. I saw no liquor [25] that was being brought through that door. I made further search of the premises, and found no other liquor.

### **Testimony of A. D. Etienne, for the Government.**

A. D. ETIENNE, a witness sworn on behalf of the plaintiff, testified as follows:

I am a chemist in the United States Internal Revenue Service, and have been such ever since the 5th day of April, 1922.

Q. "Did you ever see this bottle of wine that was seized at 115 'I' Street in this city on the 5th day of April, 1922?" A. "Yes. It was brought to the laboratory in San Francisco on June 29th, and we made a test of it."

Q. "What did you find to be the contents of the bottle?" A. "Nine and seven-tenths per cent alcoholic content by volume." It was red wine.

(Testimony of Pete Taro.)

The defendant, G. Traversi, to sustain the issue on his part, offered the testimony of the following witnesses as his evidence in chief:

**Testimony of Pete Taro, for Defendant.**

PETE TARO, a witness, sworn on behalf of the defendant, testified as follows:

A. "Mr. Taro you are one of the defendants in this case here with Mr. Traversi charged with the violation of the Volstead Act on April 5th, 1922?"

A. "I was boarding in the house, and I was sick in my legs. I got broke legs over in Jackson."

Q. "How did you come to be at 115 'I' Street on the 5th day of April, 1922?" A. "I was there 1921, September." On the 5th day of April, 1922, I was not working there at the hotel at 115 'I' Street; I was boarding there, that is all. I did not handle any liquor while I was there. I had no connection whatever with the hotel. I met Agents Wrinkel, De Spain, Greer and Mr. Plant on the 5th day of April, 1922, on the occasion of their visit to those premises, when they came behind the bar. I was close to the stove, and he grabs me and puts me for bartender; and Mr. Traversi and wife going to eat but never got to eat. He got that red wine to go and eat. He was sick at that time. And the dry agent jumped and grabbed Mr. Traversi, and he grabbed me while I was close to the stove and he put me for bartender. [26] I said, "I got nothing to do with this joint, I am boarding here"; and he says, "You stay there," and grabbed me by the neck and threw me down. That is all.

(Testimony of Pete Taro.)

Q. (By the COURT.) "Where did you get the red wine did you say?" A. "He was behind the door. He was just going to eat." Mr. Traversi had it. I don't know where he got it. He was sick at that time and he was going to eat. "Do you know where he got the wine?" A. "No, I don't know nothing about that."

I am not a bartender, and had nothing to do with that place, and was not working there.

Cross-examination by Mr. GREEN.

I was never behind the bar at all. I had my coat off and I was inside the saloon. I didn't have my coat on all the time. I was standing up by the stove. I was not behind the bar at all.

**Testimony of G. Traversi, for Defendants.**

G. TRAVERSI, one of the defendants, a witness sworn on behalf of the defendants, testified as follows:

I am the proprietor of the hotel at 115 "I" Street; and was such on April 5th, 1922.

Q. "Will you please state to the jury the circumstances of your having the red wine and the raid that was made in your place that day?" A. "Yes, I have it. I got it to take lunch and when I came in I said, 'I go get a little bit of wine,' and when I came back my wife says, 'Go and get a little wine and I will fix lunch,' and I go to my room and I take half a bottle of wine, and then I come down. When I reached the door the man here grabbed me. I had no chance to go in. That is all." I am in

(Testimony of G. Traversi.)

the habit of using wine with my meals. I like wine. Q. "Where did you eat your meals on that day?" A. "On that day I do not eat at all."

Mr. Taro was not employed by me on that day. He never worked for me. He was never in my employ, just boarded at my house. He was there more than a year, but never worked for me. [27] He had no authority to handle liquor in my house; nor did he have any authority from me to handle any liquor. I do not keep liquor in my premises for sale. Q. "Had you prior to this, on the 5th day of April, been selling any liquor there?" A. "No, sir." Q. "The liquor then that you had there—how long had it been there?" A. "I got it just for myself when I want to eat."

Cross-examination by Mr. GREEN.

Q. "What meal were you going to eat with that bottle of wine?" A. "I tell you. I had some sausage, I took some of that sardinia and lots of things." It was lunch. Q. "What time do you usually eat lunch?" A. "At that time I don't remember what time. I came from the country, I stay about seven miles out. I come just at that time. Maybe half-past three or four o'clock." Q. "What time do you usually eat your lunch?" A. "Lunch—I eat regular at twelve and six, but that day I don't remember what time."

The COURT.—"He means that he eats regularly at twelve and then at six."

On that day it was late. It was half-past three or four o'clock; I don't remember.



**(Testimony of G. Traversi.)**

Taro never used to help me out. He never helped me out. He never go back of my bar, he wasn't there at all, sometimes he go and take a glass of water. (To the Court.) J. Boizone was running the bar when I was not there. At that time when the federal agents came in, I was tending bar myself."

Q. "Were you tending bar?" A. "Yes, when I come at that time." When I came in with the bottle I was tending bar.

This was all the evidence in the case; and at its conclusion, both the plaintiff and the defendants having waived argument, the Court charged the jury as follows:

The COURT.—Gentlemen, the charge against these defendants you have heard stated. The first count of this information [28] charges the defendants with maintaining what is denominated a common nuisance and a nuisance under this Act is defined thus, "Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance." That is, it simply means that where liquor is kept in a building or a structure where it is not permitted to be kept under the Prohibition Act the maintaining of it is deemed to be for illicit and illegal purposes and it constitutes what is denominated a common nuisance. Now under the National Prohibition Act

one may keep liquor in their private dwelling on premises that are devoted solely to the use by them of a private dwelling, liquor for their own use and consumption and that of their family but not otherwise. Any liquor that is maintained in a place which is not exclusively the residence, although the parties may live upon the premises, if it is devoted partly to use as a saloon or soft drink place, or a hotel or any other than exclusively as a private dwelling, the maintenance of liquor there is not permitted under the law. Now that is the charge in the first count here. The second count is that on the same date the defendants had in their possession the liquor that is charged here as having been taken from the defendant Traversi. This quart of red wine. Now possession, of course, you all understand what that means. It means either having it in your hands, your pockets or on premises immediately under your control. That is, in law, in your possession and the defendants are charged with having this liquor in their possession and under circumstances which are not warranted under the Act.

“Now, the evidence of the Government here is such that, if you believe it, would leave no question as to the guilt of these defendants, if it satisfies you to the extent that the law requires and that is, satisfies your minds to a degree that you would be willing to act upon it in the important affairs of your [29] own life, because that in law is deemed to be proof beyond a reasonable doubt. Now, the

defendant here, Traversi, admits the possession of this wine—he admits the possession of it under circumstances which would not justify its possession if had for the purpose that he testified because the law does not warrant it or authorize it. The defendant Taro denies that he was employed there as bartender or otherwise and claims that he was employed there merely as a boarder and that he had nothing to do with the dispensing of any liquor which would be contraband under this Act. Of course, if you believe that to be true or the evidence on that point is such as to leave a reasonable doubt in your minds as to whether he was there under the circumstances testified to by the Government agents, that would entitle him to an acquittal. He must have been there as bar-keeper, not necessarily regularly employed as bar-keeper, but if he was voluntarily acting as bar-keeper or was dispensing liquors illegally he would be guilty just as though he was employed there. One cannot do that in premises of that kind and escape by saying that they were not employed there. It is not essential that there should be any regular employment but he must have been there acting in such capacity as would enable you to say that he was handling illicit liquor and if he was the fact that he was not regularly employed there, the fact that he may have been there merely temporarily during the absence of the proprietor would not render him less guilty than if he were regularly employed there, provided he was there for the purpose of aiding or assisting in carrying on an illicit traffic. Now the facts as



they have been submitted to you are very simple. It is merely a question whether you believe the testimony of the agents of the Government on the one hand or the testimony of the defendant Taro on the other, because as to Taro that question is raised. As to the other defendant, he admits that he was there at the time and came in with this bottle of liquor in his possession and I charge you that if that is so he was not entitled under this Act to have that liquor in his possession. Is there anything [30] *anything* else that counsel would like to ask?

Mr. GRAY.—No.

Mr. GREEN.—I don't know, Your Honor, whether the jury would get this idea from the instructions or not—I don't think it would be necessary for the Government to prove that the defendant Taro was caught in the very act of handling illicit liquor if he was there as bar-tender.

The COURT.—I am glad you called my attention to it. It is true as the United States Attorney suggests that it is not necessary under this Act that it be shown that any positive sale or dispensation of liquor was going on at the time, provided it is shown that there was liquor maintained on the premises. Section 33 of the Act provides: 'After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be *prima facie* evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions

of this title.' In other words, where liquor is found upon premises that are not of the character of those described in the Act as being such that people are entitled to keep liquor there, then that very fact raises the presumption and is *prima facie* evidence that it was there for an illegal purpose under the law. As I say the only place where liquor is permitted to be maintained under the Prohibition Act is in one's private residence, premises devoted solely to the occupation and use as such. It is true that where one lives at a hotel or lives in a flat, or lives in apartments, exclusively devoted to the purposes of residence he may keep and maintain liquors in those premises so occupied by him, but he is not at liberty to carry it out of those premises or take it out for the purpose of going somewhere else and enjoy it with his meals. The purpose of the law is to suppress the public consumption and maintenance of liquors that are prohibited under this Act so that the law shall not be subject to any pretense that it is being used under such circumstances solely for the use of the parties. [31] If the defendant Traversi is testifying truthfully that he was taking this with him to some place where he was going to have his lunch he would be violating the law because if he maintained it in his private residence he would be entitled to have it there and serve his family there, but not permitted to take it off those premises."

Mr. GRAY. (Attorney for Defendants).—"I don't think the testimony states that he did take it from the premises."

Mr. GREEN.—He testified that he was going out to get some lunch. He lives in the hotel.

The COURT.—You cannot make an entire hotel your private residence.

Mr. GREEN.—He stated on cross-examination that he was on duty as bartender when he had this wine in his hands and I don't think it is necessary for the Government to prove that the defendant Taro was actually engaged in the dispensing of liquor, intoxicating liquor, at the time the officers came in. If it is shown that Traversi was maintaining a nuisance there and that Taro was back of the bar and assisting him in it, I think he is guilty.

The COURT.—“I advised the jury precisely that way. It is not necessary to show that he was employed there. If he was aiding in dispensing liquors in an establishment that was violating the law, he would be guilty and if he was not he would not be guilty. If he was there merely for some other purpose of an innocent nature he would not be guilty.

A JUROR.—“May I ask a question, your Honor?”

The COURT.—“Certainly.”

JUROR.—Suppose this defendant Taro—if this was the first time that liquor was brought on the premises would that have any bearing? It has not been brought out that there was more than once that liquor was brought in.

The COURT.—“Oh, well, you must use your own judgment. You are entitled to draw reasonable deduction from the evidence that is before you and

determine whether if liquor was brought there [32] at one time in an illegal way it was not brought there for the same purpose on other occasions. It is a question of fact for you. The Court cannot instruct you as to that. You may retire, gentlemen. [33]

**(Order Allowing Bill of Exceptions.)**

The foregoing is a correct transcript and record of the proceedings had at the trial of the above-entitled cause, including the charge of the Court to the jury.

There were no objections or exceptions of any character taken or reserved at the trial either to evidence or the charge of the Court; but I have, at the earnest request of counsel for the defendant consented to certify the record to the end that a review may be had of any question which may be deemed to arise thereon.

WM. C. VAN FLEET,

U. S. District Judge.

San Francisco, Cal., December 2, 1922.

[Endorsed]: Filed Dec. 4, 1922. W. B. Maling, Clerk. By Thomas J. Franklin, Dep. Clerk. [34]

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**Certificate of Clerk U. S. District Court to Transcript of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing 34 pages, numbered from 1 to 34, in-

clusive, contain a full, true and correct transcript of certain records and proceedings, in the case of the United States of America vs. G. Traversi and Pete Taro, numbered 1271, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in accordance with "Praecipe" (a copy of which is embodied in this transcript) and the instructions of the attorney for defendant and plaintiff in error herein.

I further certify that the costs for preparing and certifying the foregoing transcript on writ of error is the sum of Thirteen Dollars and Ten Cents (\$13.10), and that same has been paid to me by the attorney for plaintiff in error herein.

Annexed hereto is the original citation on writ of error (pages 38 and 39) and the original writ of error (pages 36 and 37) with the return of the said District Court to said writ of error attached thereto (page 37).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 15th day of December, 1922.

[Seal]

WALTER B. MALING,  
Clerk.

By Thomas J. Franklin,  
Deputy Clerk. [35]



**Writ of Error.**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between G. Traversi and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said G. Traversi, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.



WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 21st day of October, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal]

WALTER B. MALING,  
Clerk of the United States District Court.

By Thomas J. Franklin,  
Deputy Clerk.

Allowed by

WM. C. VAN FLEET,  
U. S. District Judge. [36]

Service hereof by copy hereby admitted this 24th day of October, 1922.

JOHN I. WILLIAMS,  
United States Attorney.

### **Return to Writ of Error.**

The answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within writ of error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained.

By the Court:

[Seal]

WALTER B. MALING,  
Clerk U. S. District Court, Northern District of  
California.

By Thomas J. Franklin,  
Deputy Clerk.

[Endorsed]: No. 1271. United States District  
Court for the Northern District of California,  
Northern Division. G. Traversi, Plaintiff in Error  
vs. United States of America, Defendant in Error.  
Writ of Error. Filed at — o'clock and — Min.  
— M. Oct. 24, 1922. Walter B. Maling, Clerk.  
By Thomas J. Franklin, Deputy Clerk. [37]

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**Citation on Writ of Error.**

UNITED STATES OF AMERICA,—ss.

The President of the United States to The United  
States of America, GREETING:

You are hereby cited and admonished to be and  
appear at a United States Circuit Court of Appeals  
for the Ninth Circuit, to be holden at the City of  
San Francisco, in the State of California, within  
thirty days from the date hereof, pursuant to a  
writ of error duly issued and now on file in the  
Clerk's office of the United States District Court for  
the Northern District of California (Northern Di-  
vision), wherein G. Traversi is plaintiff in error,  
and you are defendant in error, to show cause, if  
any there be, why the judgment rendered against  
the said plaintiff in error, as in the said writ of

error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 17th day of October, A. D. 1922.

WM. C. VAN FLEET,  
United States District Judge. [38]

Service hereof by copy hereby admitted this 24th day of October, 1922.

JOHN I. WILLIAMS,  
United States Attorney.

[Endorsed]: No. 1271. United States District Court for the Northern District of California. G. Traversi, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed at — o'clock and — Min —M. Oct. 24, 1922. Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk. [39]

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[Endorsed]: No. 3955. United States Circuit Court of Appeals for the Ninth Circuit. G. Traversi, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Northern Division

of the United States District Court of the Northern District of California, First Division.

Filed December 16, 1922.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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United States Circuit Court of Appeals for the  
Ninth Circuit.

G. TRAVERSI,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Extending Time to and Including December  
16, 1922, to File Record and Docket Cause.**

For good reasons appearing, it is ordered that the time for filing the record herein in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended and enlarged until and including the 16th day of December, 1922.

Dated November 15th, 1922.

WM. C. VAN FLEET,  
Judge of the U. S. District Court for the Northern  
District of California.

[Endorsed]: No. 3955. United States Circuit  
Court of Appeals for the Ninth Circuit. G. Trav-

ersi, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Extending Time. Filed Nov. 16, 1922. F. D. Monckton, Clerk. Refiled Dec. 16, 1922. F. D. Monckton, Clerk.

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United States Circuit Court of Appeals for the Ninth Circuit.

G. TRAVERSI,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Extending Time to and Including January 2, 1923, to File Record and Docket Cause.**

For good reasons appearing, it is ordered that the time for filing the record herein in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended and enlarged until and including the 2d day of January, 1923.

Dated December 15, 1922.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

[Endorsed]: No. 3955. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including January 2, 1923, to File Record and Docket Cause. Filed Dec. 15, 1922. F. D. Monckton, Clerk. Refiled Dec. 16, 1922. F. D. Monckton, Clerk.

